

**BEFORE THE JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

IN RE:

OXYCONTIN ANTITRUST LITIGATION

)
)
) **MDL DOCKET NO. 1603**
)
)

**SUPPLEMENT TO NOTICE OF ACTION RELATED TO
IN RE OXYCONTIN ANTITRUST LITIGATION**

On September 4, Purdue filed a notice informing the Panel of a potential “tag-along action” to *In Re OxyContin Antitrust Litigation*, MDL No. 1603:

*American Federation of State, County and Municipal Employees,
District Council 47 Health and Welfare Fund, et al. v. Purdue
Pharma L.P. and The Purdue Frederick Company Inc.,
Civil Action No. 2:07-CV-01968-RK (E.D. Pa.) (“AFSCME”)
(Complaint attached as Ex. 1 to Notice of Related Action).*

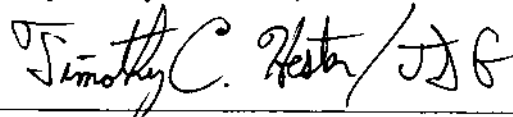
On the same day, Judge Kelly of the U.S. District Court for the Eastern District of Pennsylvania transferred *AFSCME* to the U.S. District Court for the Southern District of New York pursuant to 28 U.S.C. § 1404(a) on the ground that *AFSCME* is related to *New Mexico UFCW Union’s and Employers’ Health & Welfare Trust Fund v. Purdue Pharma L.P.*, No. 07-6916 (S.D.N.Y. filed Aug. 1, 2007), which is presently assigned to Judge Koeltl. (Order, *AFSCME* (E.D. Pa. Sept. 4, 2007) (Ex. A at 1).) Noting that the parties in *AFSCME* disagree on whether the case is also related to *In Re OxyContin Antitrust Litigation*, Judge Kelly ruled that

“the determination of the appropriate judicial assignment for [AFSCME] should be made in the first instance by the transferee court in the Southern District of New York.” (Ex. A at 1-2.)

Purdue has requested that Judges Stein and Koeltl of the Southern District of New York transfer the *New Mexico UFCW* action to Judge Stein for consolidation with *In re OxyContin Antitrust Litigation* pursuant to Rule 15 of the Southern District of New York’s Rules for the Division of Business Among District Judges. (Letter from Timothy C. Hester to Judges Stein & Koeltl (Aug. 30, 2007) (Ex. B)); *see also* J.P.M.I. R. 7.5(a) (requests for assignment of potential “tag-along” action filed in transferee district “should be made in accordance with local rules for the assignment of related actions”).

Dated: September 7, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Timothy C. Hester" followed by a stylized flourish or initials.

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CERTIFICATE OF SERVICE

I hereby certify that I caused true and correct copies of the foregoing Notice of Related Action to be served by First-Class U.S. Mail this 7th day of September, 2007, on the following:

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Joshua D. Greenberg

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMERICAN FEDERATION OF STATE,	:	CIVIL ACTION
COUNTY AND MUNICIPAL EMPLOYEES,	:	
DISTRICT COUNCIL 47 HEALTH AND	:	
WELFARE FUND, et al.	:	
	:	
vs.	:	
	:	
PURDUE PHARMA L.P. and	:	NO. 07-1968
THE PURDUE FREDERICK COMPANY INC.	:	

ORDER

AND NOW, this 4th day of September, 2007, upon consideration of Defendants' Motion to Transfer, (Doc. No. 7), Plaintiff's response thereto, and Supplement to Defendants' Motion to Transfer this Action to the Southern District of New York, it is hereby **ORDERED** that said Motion is **GRANTED IN PART**. The Court finds that this action is related to an action pending in the United States District Court for the Southern District of New York, New Mexico UFCW Fund v. Purdue Pharma L.P., Number 07-6916. Accordingly, this action is transferred to that Court "in the interest of justice," 28 U.S.C. § 1404(a).

The Court notes that the Defendants contend that this action is also related to several class actions pending before the Honorable Sidney Stein in connection with the OxyContin antitrust and patent multidistrict litigation. On the other hand, the Plaintiff contends that this action is not related to the antitrust or patent cases, but rather is related to the New Mexico UCFW action, which has been assigned to the Honorable John G. Koeltl. This Court concludes that the determination of the appropriate judicial assignment for this matter should be

made in the first instance by the transferee court in the Southern District of New York.

BY THE COURT:

/s/ Robert F. Kelly

ROBERT F. KELLY
SENIOR JUDGE

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August 30, 2007

BY HAND DELIVERY

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Daniel Patrick Moynihan U.S. Courthouse
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New York, NY 10007

The Honorable John G. Koeltl
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street, Room 1030
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Re: *In re OxyContin Antitrust Litigation*, No. 04-MDL-1603 (SHS), and
New Mexico UFCW Union's and Employers' Health and Welfare
Trust Fund v. Purdue Pharma L.P., No. 07-6916 (JGK)

Dear Judges Stein and Koeltl:

The Purdue defendants in the above-captioned actions (collectively, "Purdue") respectfully request that *New Mexico UFCW Union's and Employers' Health and Welfare Trust Fund v. Purdue Pharma L.P.*, No. 07-6916, be transferred to Judge Stein for consolidation with *In re OxyContin Antitrust Litigation*, No. 04-MDL-1603 (the "MDL Proceeding") pursuant to Rule 15 of this Court's Rules for the Division of Business Among District Judges ("Rule 15"). Transfer would serve "the interests of justice and efficiency," Rule 15(a), because the *New Mexico UFCW* action – like five previously filed actions in the MDL Proceeding – alleges that Purdue's misleading marketing of OxyContin caused a putative nationwide class of third-party payors ("TPPs") to overpay for the medication, and that the TPPs are entitled to recover their alleged overpayments under the various states' consumer protection statutes and the doctrine of unjust enrichment. Moreover, the MDL Proceeding includes numerous other actions, on behalf of putative nationwide classes that subsume the putative class in *New Mexico UFCW*, that seek to recover TPPs' alleged overpayments for OxyContin.

COVINGTON & BURLING LLP

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Plaintiff in the *New Mexico UFCW* complaint, which was filed on August 1, initially designated the case as “related to” the antitrust cases already before Judge Stein as part of the MDL proceeding “because the alleged actions taken by Defendants” in the *New Mexico UFCW* complaint “were aimed at the same goal” as those alleged in the MDL complaints – “increasing market share and profits of OxyContin.” (Civil Cover Sheet, *New Mexico UFCW* (Ex. 1).) On August 6, Judge Stein received from the *New Mexico UFCW* plaintiff a letter stating that it had “designated the case as ‘related’ to” the MDL proceeding pending before Judge Stein “in error” because *New Mexico UFCW* is a “RICO and consumer protection case” and requesting that the case be assigned to a judge randomly. (Doc. 3, *New Mexico UFCW* (Ex. 2).) Neither the initial “related” designation nor the letter reversing that designation was served on Purdue. See Rule 15(c) (“any contention of relatedness” by a party filing a civil case “shall be served with the complaint”). Judge Stein granted the request for random assignment via an endorsement on the letter, and the action was subsequently assigned to Judge Koeltl. (Ex. 2; Doc. 4, *New Mexico UFCW* (Ex. 3).)

Purdue respectfully suggests that the *New Mexico UFCW* action be returned to Judge Stein “in the interests of justice and efficiency,” Rule 15(a), because, by plaintiff’s own admission, it is a “consumer protection case,” and because the allegations in the complaint are similar to the allegations in five other putative nationwide class actions brought under consumer protection statutes that were filed in 2004 and are pending in the MDL Proceeding.

The *New Mexico UFCW* action alleges that Purdue “aggressively” and “falsely and deceptively” marketed OxyContin by, *inter alia*, “minimiz[ing] OxyContin’s risks” and “claiming that it was less addictive” than other pain medications, causing TPPs “to overpay substantial amounts of money for OxyContin” as a result. (*New Mexico UFCW* Compl. ¶¶ 1, 4, 29, 34-35, 73 (Ex. 4).) Purporting to represent “a nationwide Class consisting of all insurance providers and other third-party payors” that made payments for OxyContin (*id.* ¶¶ 2, 77), the plaintiff further asserts that the TPPs are entitled to recover their alleged overpayments under, *inter alia*, the various state consumer protection statutes and the doctrine of unjust enrichment (*id.* ¶¶ 113-71.)

Five putative class actions in the MDL Proceeding likewise allege that Purdue “aggressive[ly] and fraudulent[ly]” marketed OxyContin to healthcare providers on various occasions by, *inter alia*, “minimiz[ing] the dangers and addictiveness associated with the drug,” causing TPPs to make “overpayments for OxyContin.” (Compl. ¶¶ 5-6, 61-64, 76, 85, 94-96, 142, 144, *County of Suffolk, N.Y. v. Purdue Pharma, L.P.*, No. 04-651 (Ex. 5); Compl. ¶¶ 5-6, 61-64, 76, 85, 94-96, 142, 144, *La. Health Serv. Indemn. Co. v. Purdue Pharma L.P.*, No. 04-1212 (Ex. 6); Compl. ¶¶ 5-6, 61-64, 76, 85, 94-96, 142, 144, *United Fed’n of Teachers Welfare Fund v. Purdue Pharma L.P.*, No. 04-1808 (Ex. 7); Compl. ¶¶ 5-6, 61-64, 76, 85, 94-96, 142, 144, *Whittle v. Purdue Pharma L.P.*, No. 04-2089 (Ex. 8); Compl. ¶¶ 5-6, 61-64, 76, 85, 94-96, 142, 144, *Local 1199 Nat’l Benefit Fund for Health & Human Servs. Employees v. Purdue Pharma L.P.*, No. 04-3093 (Ex. 9).)

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Like *New Mexico UFCW*, each of these five actions is brought on behalf of a putative nationwide class of TPPs. (See Ex. 5, *County of Suffolk* Compl. ¶¶ 6, 25 (putative class of all individuals and TPPs in the U.S. that made payments for OxyContin); Ex. 7, *United Federation* Compl. ¶¶ 6, 25 (same); Ex. 8, *Whittle* Compl. ¶¶ 6, 25 (same); Ex. 6, *Louisiana Health* Compl. ¶¶ 6, 25 (putative class of all TPPs that made payments for OxyContin); Ex. 9, *Local 1199* Compl. ¶¶ 6, 25 (same as *Louisiana Health*).) And like *New Mexico UFCW*, each of these actions seeks to recover the alleged overpayments under, *inter alia*, the various states' consumer protection statutes and the doctrine of unjust enrichment. (See Exs. 5-9.) Finally, plaintiff is contending that "the alleged actions taken by the Defendants under each claim" in *New Mexico UFCW* "were aimed at the same goal" as "the MDL antitrust action currently pending before Judge Stein" – which, according to plaintiff, is to "increas[e] market share and profits of OxyContin." (Ex. 1, *New Mexico UFCW* Civil Cover Sheet.)

Because the marketing allegations in these five actions are like those in the *New Mexico UFCW* action, each of the three factors in Rule 15 supports transfer to Judge Stein. *First*, transfer would result in "a substantial saving of judicial resources" because it would avoid the need for two judges – one of whom has already spent a considerable amount of time presiding over numerous complex claims involving OxyContin – to preside over actions involving similar marketing allegations regarding the medication. Rule 15(a)(i). *Second*, transfer would advance "the just, efficient, and economical conduct of the litigation" by eliminating the risks of, *inter alia*, duplicative discovery and conflicting pretrial rulings on issues such as class certification. Rule 15(a)(ii). *Third*, transfer would serve "the convenience of the parties and witnesses" by ensuring that they need not travel twice for redundant depositions or attend multiple hearings on the same legal issues. Rule 15(a)(iii).

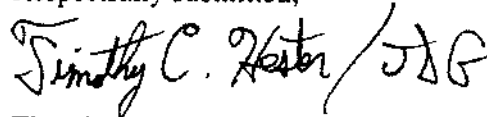
Finally, transferring *New Mexico UFCW* to Judge Stein will not expand the MDL Proceeding. Although marketing claims and antitrust claims are premised on distinct theories of liability, as explained above, five actions in the MDL Proceeding already include marketing claims largely mirroring those in *New Mexico UFCW*. Further, these six actions involve some of the same complicated legal issues, such as whether the TPPs have standing under the various states' consumer protection statutes and doctrines of unjust enrichment, and whether the marketing claims are preempted to the extent they are based on FDA-approved statements. Moreover, the plaintiff in *New Mexico UFCW* alleges the same type of injury (overpayments for OxyContin) and seeks the same damages (recovery of the alleged overpayments) as do the plaintiffs in numerous other actions in the MDL Proceeding brought on behalf of putative nationwide classes that subsume the putative nationwide class of TPPs in *New Mexico UFCW*.

For the foregoing reasons, the *New Mexico UFCW* action should be transferred to Judge Stein for consolidation with the MDL Proceeding pursuant to Rule 15.

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Respectfully submitted,

A handwritten signature in black ink that reads "Timothy C. Hester" followed by a large, stylized "JAG" monogram.

Timothy C. Hester

Counsel for Purdue Defendants

cc: Christopher A. Seeger, Lead Counsel
for the *New Mexico UFCW* Plaintiff